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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

EDL

LUCIA KANTER,

13 Plaintiff,

14 CALIFORNIA ADMINISTRATIVE OFFICE
15 OF THE COURTS,

16 Defendant.

C Case No. 07 2423

17) COMPLAINT FOR DAMAGES AND
18) INJUNCTIVE RELIEF

19) Disability and gender discrimination;
20) retaliation; (Cal. Fair Employment and
21) Housing Act, Gov't Code §§ 12940 *et seq.*);
22) Disability discrimination; retaliation
23) (Americans with Disabilities Act, 42 U.S.C.
24) §12101 *et seq.*); Gender discrimination (Title
25) VII, 42 U.S.C. §2000e); Violation of Equal
26) Protection (42 U.S.C. § 1983)

27) **JURY TRIAL DEMANDED**

28 Plaintiff complains and alleges as follows:

I. NATURE OF THE ACTION

29 1. This is an individual employment action brought by Plaintiff Lucia Kanter against
30 her former employer, the California Administrative Office of the Courts (referred to in this
31 Complaint as "AOC")

32 2. Defendant discriminated against Plaintiff, including adversely altering the terms

1 and conditions of her employment, retaliated against her, and ultimately terminated her. These
2 actions were based upon her status as the mother of a severely disabled child in violation of
3 federal and state law, and because she questioned prior actions by the Defendant relating to
4 employment conditions associated with her pregnancy.

5 3. Plaintiff seeks compensatory damages for lost wages and benefits and emotional
6 distress, reinstatement or front pay in lieu of reinstatement, injunctive relief, and her attorneys'
7 fees and costs.

8 II. PARTIES

9 4. Currently, and at all relevant times, Plaintiff resided in the City and County of San
10 Francisco, California. Plaintiff was employed by Defendant in its San Francisco Headquarters
11 Office. Defendant's unlawful acts alleged in this complaint occurred in the City and County of
12 San Francisco, California.

13 5. Plaintiff is informed and believes and on that basis alleges that Defendant
14 California Administrative Office of the Courts ("AOC") is and at all relevant times was the staff
15 agency to the Judicial Council of California, headquartered in San Francisco, California. At all
16 relevant times, Defendant AOC was an employer as defined in the California Fair Employment
17 and Housing Act and the federal Americans with Disabilities Act. The AOC had far in excess of
18 fifty employees throughout Plaintiff's employment.

19 III. EXHAUSTION OF REMEDIES

20 6. Plaintiff filed a timely charge of discrimination with the federal Equal
21 Employment Opportunity Commission (which was cross-filed with the California Department of
22 Fair Employment and Housing). Since Plaintiff's charge was filed against a California state
23 agency, the EEOC forwarded the matter to the United States Department of Justice for issuance
24 of the notice of right to sue. Plaintiff received the notice of right to sue from the Justice
25 Department on February 6, 2007, and is timely filing this action within 90 days of that date.

26 IV. JURISDICTION

27 7. This Court has jurisdiction over claims in this action because the claims either
28 arise under federal law, or with regard to the state law claims, this Court has pendant

1 jurisdiction.

2 **V. STATEMENT OF FACTS**

3 8. Plaintiff is an attorney, having been admitted to the Bar of the State of California
4 in 1998. After working in private practice for several years as a management-side employment
5 lawyer, she was hired by the AOC on April 29, 2002. The AOC employs in excess of 600
6 employees with approximately twelve departments. Plaintiff was employed in the General
7 Counsel's Office of the AOC, assigned to the Labor and Employment Unit. The General
8 Counsel's office employed approximately 75 employees. Plaintiff provided training, legal advice
9 and support, and oversight of outside counsel to California state judges, court management, and
10 AOC management in the area of employment law.

11 9. In 2004, Plaintiff took an approved parental leave for the birth of her first child, a
12 boy. Upon returning from that leave, Plaintiff successfully worked an approved 80% time
13 schedule. On September 2, 2005, Plaintiff began a second authorized parental leave for the birth
14 of her second son.

15 10. In early December, 2005, Plaintiff notified the AOC of her first son's possible
16 disability, which had tentatively been diagnosed as autism. On January 3, 2006, Plaintiff wrote
17 her supervisor, requesting a 60% part-time schedule or in the alternative, her prior 80% time
18 schedule with a rotating day off, which would permit Plaintiff to participate in at least some of
19 the many therapy services anticipated for her child. Defendant denied both of these suggestions
20 and made no recommendations of its own. Plaintiff's supervisor informed Plaintiff at that time
21 that she should contact the office in February to further discuss plans for her return to work.

22 11. At the time Plaintiff suggested the 60% or 80% part-time schedule, other similarly
23 situated attorneys in the office who did not have disabled children were given the kinds of
24 alternative schedules Plaintiff had requested. For example, one attorney without an association
25 to a disabled person, had been working on a 50% part-time work schedule for several years.
26 Other attorneys without an association to a disabled person worked on 80% time schedules.

27 12. On February 15, 2006, Defendant was fully informed about the diagnosis of
28 Plaintiff's first child's disability, which was autism. At the same time she informed Defendant of

1 the diagnosis, Plaintiff requested an additional leave of absence of one year which was consistent
2 with Defendant's leave policies and practice. On February 27, 2006, Plaintiff's supervisor
3 denied this leave request.

4 13. On the next day, February 28, 2006, Plaintiff requested any additional time off
5 beyond her scheduled return date of March 15, 2006, to enable her to hire a second nanny to
6 ensure adequate child care for her disabled and non-disabled child. This request was also denied,
7 and Plaintiff was informed that she must return to work by March 15, 2006.

8 14. On March 3, 2006, Plaintiff formally protested Defendant's actions stating her
9 belief that she was being treated differently from other employees and past practice due to her
10 association with her disabled child, and for raising a past violation of policy relating to
11 pregnancy-related doctor's appointments during her earlier pregnancy.

12 15. At least seven other attorneys in the office in the Office of the General Counsel,
13 some with less seniority than Plaintiff, and all of whom did not have an association to a disabled
14 person, had been granted more generous leaves of absence, part-time schedules or alternative
15 schedules.

16 16. Defendant terminated Plaintiff on March 13, 2006, which was two days prior to
17 her scheduled return date.

18 17. The reason given by Defendant for terminating Plaintiff was that, ostensibly,
19 Plaintiff's "desk" needed to be covered immediately. This reason was pretextual in that
20 Plaintiff's position remained vacant for more than three months after her termination.

21 18. Plaintiff's work performance during her employment with Defendant had been
22 excellent. Her performance reviews always included rankings which indicated that she either
23 fully met or exceeded expectations. She received many commendations for her work with her
24 clients, which included court management, AOC management, and judges. She regularly made
25 herself available to provide advice and consultation, including taking calls at home on her days
26 off, during evenings, and weekends. Plaintiff received merit salary increases and a promotion
27 based on her excellent work during her employment. Plaintiff enjoyed her work, was dedicated to
28 the AOC, and intended to make a life-long career with the agency.

1 19. Plaintiff was devastated, both emotionally and financially, as a result of
2 Defendant's unlawful actions.

VI. FIRST CLAIM FOR RELIEF

(Disability Discrimination Based on Association with a Disabled Person

Cal. Gov't Code §12926(m) & 12940)

20. Plaintiff incorporates each allegation set forth in paragraphs 1 through 19 above.

7 21. At all relevant times, Plaintiff's child was a person with a disability within the
8 meaning of California Government Code §§ 12926(i) & 12940 in that Plaintiff's child was
9 diagnosed with autism. Plaintiff was a person associated with a person who has a disability
10 within the meaning of section 12926(m).

11 22. At all relevant times, Defendant AOC was an employer within the meaning of
12 California Government Code §12940 and §12926.

13 23. It is an unlawful employment practice for an employer to discriminate against an
14 employee, including to discharge the employee, because of her association with a person who has
15 a disability.

16 24. The above-described actions of Defendant constitute discrimination based on
17 disability, in violation of Gov't Code §12940.

18 25. As a proximate result of Defendant's actions, Plaintiff has suffered and continues
19 to suffer substantial loss of earnings and other employment benefits, and has suffered and
20 continues to suffer pain, embarrassment, humiliation and mental anguish, all to her damage in an
21 amount according to proof.

22 26. Defendant's actions were willful, malicious, fraudulent and oppressive, and were
23 committed with the wrongful intent to injure Plaintiff and in conscious disregard of Plaintiff's
24 rights.

WHEREFORE, Plaintiff seeks relief as set forth below.

VII. SECOND CLAIM FOR RELIEF

(Disability Discrimination Based on Association with a Disabled Person

Americans with Disabilities Act, 42 U.S.C. §12112)

1 27. Plaintiff incorporates each allegation set forth in paragraphs 1 through 26 above.

2 28. At all relevant times, Plaintiff's child was a person with a disability within the
3 meaning of the Americans with Disabilities Act ("ADA"), 42 U.S.C. in that Plaintiff's child was
4 diagnosed with autism. Plaintiff was a person associated with a person who has a disability
5 within the meaning of section 12112(b)(4).

6 29. At all relevant times, Defendant AOC was an employer and a covered entity
7 within the meaning of the Americans with Disabilities Act, 42 U.S.C. § 12111.

8 30. It is an unlawful employment practice for an employer to discriminate against an
9 employee, including to discharge the employee, or to deny equal benefits to an employee because
10 of her association with a person who has a disability. 42 U.S.C. § 12112.

11 31. The above-described actions of Defendant constitute discrimination based on
12 disability, in violation of the Americans with Disabilities Act, 42 U.S.C. § 12112.

13 32. As a proximate result of Defendant's actions, Plaintiff has suffered and continues
14 to suffer substantial loss of earnings and other employment benefits, and has suffered and
15 continues to suffer pain, embarrassment, humiliation and mental anguish, all to her damage in an
16 amount according to proof.

17 33. Defendant's actions were willful, malicious, fraudulent and oppressive, and were
18 committed with the wrongful intent to injure Plaintiff and in conscious disregard of Plaintiff's
19 rights.

20 WHEREFORE, Plaintiff seeks relief as set forth below.

21 **VIII. THIRD CLAIM FOR RELIEF**

22 (Gender Discrimination, Cal. Gov't Code § 12940(a))

23 34. Plaintiff incorporates each allegation set forth in paragraphs 1 through 33 above.

24 35. At all relevant times, Plaintiff was an employee within the meaning of California
25 Government Code § 12940.

26 36. At all relevant times, Defendant AOC was an employer within the meaning of
27 California Government Code § 12940.

28 37. It is an unlawful employment practice for an employer to discriminate against an

1 employee, including to discharge the employee, because of her gender.

2 38. The above-described actions of Defendant constitute discrimination based on
3 gender, in violation of Gov't Code §12940 in that Defendant's actions were based on unlawful
4 stereotypes that a woman with a disabled child will not be a reliable and productive employee. In
5 this instance, Plaintiff is a member of a protected subclass of women who have children with
6 disabilities. This type of discrimination is sometimes referred to as "sex-plus" discrimination.

7 39. As a proximate result of Defendant's actions, Plaintiff has suffered and continues
8 to suffer substantial loss of earnings and other employment benefits, and has suffered and
9 continues to suffer pain, embarrassment, humiliation and mental anguish, all to her damage in an
10 amount according to proof.

11 40. Defendant's actions were willful, malicious, fraudulent and oppressive, and were
12 committed with the wrongful intent to injure Plaintiff and in conscious disregard of Plaintiff's
13 rights.

14 WHEREFORE, Plaintiff seeks relief as set forth below.

15 **IX. FOURTH CLAIM FOR RELIEF**

16 (Gender Discrimination, Title VII, Civil Rights Act of 1964, § 701 *et seq.*

17 42 U.S.C. §2000e *et seq.*)

18 41. Plaintiff incorporates each allegation set forth in paragraphs 1 through 40 above.

19 42. At all relevant times, Plaintiff was an employee within the meaning of 42 U.S.C.
20 §2000e.

21 43. At all relevant times, Defendant AOC was an employer within the meaning of 42
22 U.S.C. §2000e.

23 44. It is an unlawful employment practice for an employer to discriminate against an
24 employee, including to discharge the employee, because of her gender.

25 45. The above-described actions of Defendant constitute discrimination based on
26 gender, in violation of Title VII in that Defendant's actions were based on unlawful stereotypes
27 that a woman with a disabled child will not be a reliable and productive employee. In this
28 instance, Plaintiff is a member of a protected subclass of women who have children with

1 disabilities. This type of discrimination is sometimes referred to as "sex-plus" discrimination.

2 46. As a proximate result of Defendant's actions, Plaintiff has suffered and continues
3 to suffer substantial loss of earnings and other employment benefits, and has suffered and
4 continues to suffer pain, embarrassment, humiliation and mental anguish, all to her damage in an
5 amount according to proof.

6 47. Defendant's actions were willful, malicious, fraudulent and oppressive, and were
7 committed with the wrongful intent to injure Plaintiff and in conscious disregard of Plaintiff's
8 rights.

9 WHEREFORE, Plaintiff seeks relief as set forth below.

10 **XI. SIXTH CLAIM FOR RELIEF**

11 (Retaliation, Cal. Gov't Code §12940(h))

12 48. Plaintiff incorporates each allegation set forth in paragraphs 1 through 47 above.

13 49. Plaintiff engaged in protected activity under the Fair Employment and Housing
14 Act by taking leave and by protesting unlawful conditions imposed with respect to medical
15 appointments related to Plaintiff's earlier pregnancy. As noted above, On March 3, 2006,
16 Plaintiff formally protested Defendant's actions stating her belief that she was being treated
17 differently from other employees and past practice due to her association with her disabled child,
18 and for raising a past violation of policy relating to pregnancy-related doctor's appointments
19 during her earlier pregnancy. Defendant therefore was aware of Plaintiff's protected activity, and
20 discharged Plaintiff and otherwise discriminated against her because of her protected activity.
21 The above-described actions by Defendant constitute retaliation in violation of Cal. Gov't Code
22 §12940(h).

23 50. As a proximate result of Defendant's actions, Plaintiff has suffered and continues
24 to suffer substantial loss of earnings and other employment benefits, and has suffered and
25 continues to suffer pain, embarrassment, humiliation and mental anguish, all to her damage in an
26 amount according to proof.

27 51. Defendants' actions were willful, malicious, fraudulent and oppressive, and were
28 committed with the wrongful intent to injure Plaintiff and in conscious disregard of Plaintiff's

1 rights.

2 WHEREFORE, Plaintiff seeks relief as set forth below.

3 **XII. SEVENTH CLAIM FOR RELIEF**

4 (Violation of Equal Protection and Civil Rights, 42 U.S.C. § 1983)

5 52. Plaintiff incorporates each allegation set forth in paragraphs 1 through 51.

6 53. By virtue of the conduct set forth above, Defendant violated Plaintiff's right, protected
7 by the Fourteenth Amendment, to be free from discrimination on the basis of sex in public
8 employment. 42 U.S.C. § 1983. Defendant's conduct constituted discriminatory, arbitrary and
9 capricious action, carried out under color of state law.

10 54. As a proximate result of Defendant's actions, Plaintiff has suffered and continues to
11 suffer substantial loss of earnings and other employment benefits, and has suffered and continues to
12 suffer pain, embarrassment, humiliation and mental anguish, all to her damage in an amount according
13 to proof.

14 55. Defendant's actions were willful, malicious, fraudulent and oppressive, and were
15 committed with the wrongful intent to injure Plaintiff and in conscious disregard of Plaintiff's rights.

16 WHEREFORE, Plaintiff seeks relief as set forth below.

17 **XV. TENTH CLAIM FOR RELIEF**

18 (Wrongful Termination in Violation of Public Policy, California common law)

19 56. Plaintiff incorporates each allegation set forth in paragraphs 1 through 55 above.

20 57. Defendant's actions in terminating Plaintiff under the circumstances alleged above,
21 violate the fundamental public policies embodied, among elsewhere, in California Government Code
22 §12940 *et seq.*, and the regulations promulgated thereunder. Defendant's conduct in terminating
23 Plaintiff under these circumstances constitutes a wrongful termination in violation of public policy.

24 58. As a proximate result of Defendant's actions, Plaintiff has suffered and continues to
25 suffer substantial loss of earnings and other employment benefits, and has suffered and continues to
26 suffer pain, embarrassment, humiliation and mental anguish, all to his damage in an amount according
27 to proof.

28 59. Defendant's actions were willful, malicious, fraudulent and oppressive, and were

1 committed with the wrongful intent to injure Plaintiff and in conscious disregard of Plaintiff's rights.

2 WHEREFORE, Plaintiff seeks relief as set forth below.

3 **PRAYER FOR RELIEF**

4 Plaintiff seeks judgment against Defendants as follows:

5 1. Compensatory damages, including emotional distress damages and lost wages and
6 benefits to date;

7 2. For reinstatement, or front pay in lieu of reinstatement, in a sum according to proof;

8 3. Interest on judgment, including prejudgment interest, at the legal rate;

9 4. Attorneys' fees and costs;

10 5. Injunctive relief; and

11 6. Such other and further relief as the Court may deem proper.

12

13 **DICKSON - ROSS LLP**

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15 Dated: May 4, 2007

By:

Kathy Burkett Dickson
KATHRYN BURKETT DICKSON
Attorneys for Plaintiff
LUCIA KANTER

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19 **DEMAND FOR JURY TRIAL**

20 Plaintiff demands a jury trial on all claims.

21 **DICKSON - ROSS LLP**

22

23 Dated: May 4, 2007

By:

Kathy Burkett Dickson
KATHRYN BURKETT DICKSON
Attorneys for Plaintiff
LUCIA KANTER